

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD A. WILLIAMSON, ON BEHALF  
OF AND AS TRUSTEE FOR AT HOME  
BONDHOLDERS' LIQUIDATING TRUST,

Plaintiff,

v.

VERIZON COMMUNICATIONS INC.,  
VERIZON SERVICES CORP.,  
VERIZON CORPORATE RESOURCES  
GROUP LLC, VERIZON DATA SERVICES  
LLC, VERIZON NEW YORK INC.,  
AT&T INC., AT&T OPERATIONS, INC.,  
AT&T SERVICES, INC.,

Defendants.

CIVIL ACTION

ECF CASE

Civil Action No. 1:11-cv-04948 (LTS)(HP)

**AT&T DEFENDANTS' NOTICE OF  
MOTION FOR LEAVE TO FILE SUR-  
REPLY IN OPPOSITION TO  
PLAINTIFF'S MOTION TO AMEND  
ITS INFRINGEMENT CONTENTIONS**

*MOTION GRANTED*  
**SO ORDERED**  
*Henry Pitman*  
HENRY PITMAN  
UNITED STATES MAGISTRATE JUDGE  
6-5-13

Defendants AT&T Operations, Inc. and AT&T Services, Inc. (collectively, "AT&T") file this Notice of Motion for Leave to File a Sur-reply in Opposition to Plaintiff's Motion to Amend Its Infringement Contentions. AT&T's Sur-reply in Opposition to Plaintiff's Motion to Amend is attached as Exhibit A.

Plaintiff presents two new arguments in his Reply. Plaintiff now argues that "no amount of due diligence would have discovered information sufficient to accuse AT&T's local ad insertion because it was not publicly available." AT&T's Sur-reply demonstrates how Plaintiff's argument is belied by the technical details at Plaintiff's disposal in the publicly available information. Furthermore, AT&T's Sur-reply addresses Plaintiff's new argument that infringement contentions against Verizon put AT&T on notice of accusations against AT&T's local ad insertion technology, an argument that flies in the face of common sense and the

requirements of the NDCal Patent Rules. AT&T was not on notice and would be prejudiced should the Court grant Plaintiff's motion for leave to amend his infringement contentions.

Prior to making this motion, counsel for AT&T made best efforts to resolve informally the matters raised in this motion by discussing them with Plaintiff's counsel telephonically. AT&T now requests leave to file a five-page Sur-reply to respond to these new arguments. The filing of this Sur-reply will not prejudice Plaintiffs. On the contrary, an inability to submit a Sur-reply would prejudice AT&T by depriving it of any opportunity to address Plaintiff's new arguments. *See Newton v. New York*, 738 F. Supp. 2d 397, 417 n.11 (S.D.N.Y. 2010) (acknowledging a district court's discretion to permit a sur-reply to address new arguments raised in a reply memorandum and observing that the rationale of fair play guides a court to disregard new arguments absent a sur-reply).

Respectfully submitted,

DATED: November 8, 2012

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By: /s/ Robert L. Maier

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*Attorneys for Defendants  
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AT&T Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of November, 2012, a copy of the foregoing AT&T DEFENDANTS' NOTICE OF MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND ITS INFRINGEMENT CONTENTIONS was filed with the Clerk of the Court of the United States District Court for the Southern District of New York and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Robert L. Maier  
Robert L. Maier